No. 16-1348

IN THE

Supreme Court of the United States

MICHAEL NELSON CURRIER,

Petitioner,

v.

VIRGINIA,

Respondent.

On Writ of Certiorari
to the Supreme Court of Virginia

JOINT APPENDIX

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IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE, VIRGINIA

Commonwealth v. Michael Currier
Case No. 12-613

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
12/03/2012	Indictment by grand jury.
06/27/2013	Felon-in-possession charge severed from breaking-and-entering and grand larceny charges.
09/17/2013	Trial on breaking-and-entering and grand larceny charges commenced; Court announced mistrial for failure to seat a jury.
10/28/2013	Trial on breaking-and-entering and grand larceny charges commenced.
10/29/2013	Trial concluded; jury found defendant not guilty.
11/20/2013	Defendant filed motion to preclude evidence by collateral estoppel.
11/21/2013	Felon-in-possession charge set for trial.
12/17/2013	Hearing on defendant's motion to preclude evidence by collateral estoppel; motion denied.
03/11/2014	Trial on felon-in-possession charge; jury found defendant guilty.
07/25/2014	Defendant filed motion to set aside verdict based on collateral estoppel.
07/29/2014	Hearing on defendant's motion to set aside verdict; motion denied.

IN THE COURT OF APPEALS OF VIRGINIA

Michael Nelson Currier v. Commonwealth of Virginia
Record No. 1428-14-2

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
07/30/2014	Notice of appeal filed.
03/23/2015	Order granting appeal.
12/15/2015	Decision issued.

IN THE SUPREME COURT OF VIRGINIA

Michael Nelson Currier v. Commonwealth of Virginia

Record No. 160102

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
06/06/2016	Order granting appeal.
12/08/2016	Decision issued.

[VA S. CT JA: 7]

Virginia:

IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE
December 3, 2012 TERM

THE GRAND JURY CHARGES THAT, in the County of Albemarle **MICHAEL N. CURRIER** did unlawfully and feloniously

On or about March 7, 2012, break and enter or enter and conceal himself in the daytime, or enter without breaking in the nighttime, the dwelling of Paul Garrison, II, with the intent to commit larceny, assault and battery or any felony other than murder, rape, robbery, or arson in violation of §§ 18.2-91; 18.2-10 of the Code of Virginia (1950) as amended.

VCC CODE: BUR-2213-F9

Docket Number:
Grand Jury Witness: William R. Underwood
Albemarle County Police Department

A True Bill /s/ [Illegible]
Foreman of the Grand Jury

Not A True Bill _____
Foreman of the Grand Jury

not guilty plea
3-19-13

12-611
12-6

[VA S. CT JA:8]

Virginia:

IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE
December 3, 2012 TERM

THE GRAND JURY CHARGES THAT, in the County of Albemarle **MICHAEL N. CURRIER** did unlawfully and feloniously

On or about March 7, 2012, steal currency or property, having a value of two hundred dollars ($200) or more, belonging to Paul Garrison, II, in violation of § 18.2-95 of the Code of Virginia (1950) as amended.

VCC CODE: LAR-2359-F9

Docket Number:
Grand Jury Witness: William R. Underwood
Albemarle County Police Department

A True Bill /s/ [Illegible]
Foreman of the Grand Jury

Not A True Bill _____
Foreman of the Grand Jury

not guilty plea
3-19-13

12-612

[VA S. CT JA:9]

Virginia:

IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

December 3, 2012 TERM

THE GRAND JURY CHARGES THAT, in the County of Albemarle **MICHAEL N. CURRIER** did unlawfully and feloniously

On or about March 7, 2012, knowingly and intentionally possess or transport a pistol, revolver, or other firearm having previously been convicted of a violent felony as defined in § 17.1-805 whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, in violation of §§ 18.2-308.2; 18.2-10 of the Code of Virginia (1950) as amended.

VCC CODE: WPN-5296-F6

Docket Number:
Grand Jury Witness: William R. Underwood
Albemarle County Police Department

A True Bill /s/ [Illegible]
Foreman of the Grand Jury

Not A True Bill _____
Foreman of the Grand Jury

not guilty plea
3-11-2014

12-613

COURT REPORTER'S TRANSCRIPT
October 28, 2013

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

Transcript of the proceedings taken in the Circuit Court for the County of Albemarle, Virginia at the October 28, 2013, Criminal Session, before the Honorable Cheryl V. Higgins, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

TESTIMONY OF PAUL GARRISON, II

* * *

[DIRECT EXAMINATION]

[By: Mr. Quatrara]

[67:8]*

Q Okay. And then, across the road, who lives across the road from you?

A Cindy Sandridge.

Q Okay. Now, let's draw your attention to the date of March the 7th, do you recall—start with the morning of that date, do you recall what did you first thing in the morning when you got up on March the 7th?

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* All references to the record are cited from the Virginia Court of Appeals Joint Appendix, with the exception of those identified as "VA S. CT JA," which are taken from the Virginia Supreme Court Joint Appendix.

A I got up, got ready, and went to work about 6:45.

* * *

[78:18]

Q Okay. Now, what, if *any,* valuables did you keep in that safe?

A I had twenty (20) guns in the safe, it was approximately seventy one thousand dollars ($71,000) in cash in that safe.

* * *

[82:7]

Q What kind of guns were they that were in your safe?

A It was some high powered rifles, shotguns, pistols.

Q Do you like to hunt?

A Yes, sir.

Q Most are primarily hunting weapons?

A Yes, sir.

Q Okay. Now as this case went on, you were ultimately, through the efforts of Albemarle County Police, you were able to ultimately recover some of these firearms, is that correct?

A Yes, sir.

Q What kind of condition were you able to recover them in?

A They were in pretty rough shape. They were full of rust, they'd been thrown in a river, and I've gotten some of them where you can use them, some of them not. They were in bad shape.

* * *

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TESTIMONY OF WILLIAM UNDERWOOD

* * *

[DIRECT EXAMINATION]

[By: Mr. Quatrara]

[116:10]

Q What, if anything, did Ms. Sandridge tell you?

A Ms. Sandridge told me she heard a banging noise across the street, sounded like somebody beating on metal. She had stepped—she originally thought that it was the homeowners that were at—had gotten home. She knew they had been gone earlier in the evening. She heard a vehicle start up, when she did she stepped out on her front porch to observe, and she saw a white 1970's model Ford pickup leaving the driveway. She stated that she saw two occupants inside the vehicle, and that the individual that was in

the passenger seat looked at her, as the truck drove by, that she felt like she could identify that person.

[117:5]

Q Now, did there come a time afterwards, in preparation for trial, in which Ms. Sandridge gave you a different piece of information with regard to the number of individuals that she believed was in the truck?

A There is, on the date that this photograph was taken, when we were at her house, she advised us that she thought it was three persons in the truck.

* * *

[125:10]

Q What did you learn about how the safe was located, how it was found?

A The fisherman had been fishing on the bank and observed something in the water. He wasn't sure what it was, but he thought it was a safe, and he called the Nelson County Sheriff's Department and reported it.

* * *

[126:19]

Q Can you give the folks on the jury just a brief overview of the items that you ultimately found in the safe?

A Yes, we found—there were numerous firearms, long guns, rifles, shotguns, in the safe. There were a lot of bank envelopes, some of them contained cash, some of them were empty. There were vehicle titles indicating that the title for that vehicle belonged to the Garrisons. There [127] were some precious metals, some coins, just various items of value inside

there. There were a lot of personal—obituaries from family members who had passed away, different items that were used to verify that the safe belonged to the Garrisons.

* * *

CROSS-EXAMINATION

[By: Mr. Barnhardt]

[184:17]

Q Thank you, officer. Now, a lot of different aspects here, so focusing on your initial conversation with Ms. Sandridge, who is the eye witness at the scene where the theft took place. She told you that there were two suspects in the car, is that right?

A On the day that I initially responded she stated two.

[185]

Q Okay. And on subsequent conversations did that number change?

A It did.

Q When did it change?

A On the September date when we were taking photographs and we spoke with her.

* * *

[189:16]

Q Okay. Now for Mr. Bradley Wood's—he turned himself in, is that right?

A He did.

Q And you interrogated him for—after he turned himself in, you interrogated Bradley Wood about the crime?

A I did.

Q And wasn't it your belief that Mr. Wood was not being honest with you during that interrogation?

A During parts of it, yes.

[190]

Q During parts that he was—wasn't he changing his story back and forth while he was talking to you?

A He was.

* * *

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TESTIMONY OF CYNTHIA SANDRIDGE

* * *

[DIRECT EXAMINATION]

[By: J. Addison Barnhardt]

[205:17]

Q Did you see any people in the truck?

A Yes, sir.

Q Okay. How many people did you see in the truck?

A I didn't—I couldn't see the driver, but I knew that there was someone driving, and I think there was two other people in the truck.

* * *

[213:16]

Q * * * Okay. Now, so you testified that when you heard the truck start up and you actually walked outside to see what was going on?

A I went to the window and then I went to the porch — on the porch, yes, sir.

Q So when you went to the window, was that when you actually saw the truck drive by?

A Uh-uh (indicating no). When I went to the window, the truck was actually coming up the driveway, the way [214] the driveway is coming up. And then I just walked out on the porch, just opened the door and walked out on the porch.

Q Just to get a better look?

A Uh-huh (indicating yes).

Q But you didn't think anything unusual, right?

A No, sir.

Q Okay. And when the car was coming up, it — this was, you said it was about in the middle of the day around 2:00 p.m.?

A It was around — between — I'm saying around 2:00, I don't remember, but —

Q Yeah, sometime around then?

A Yeah, it was in the afternoon.

Q It was a sunny day?

A Yes, sir.

Q And so, when the truck was coming up the driveway, there were glares coming off the truck, right?

A Yes, sir.

Q And there are shadows that you couldn't see?

A Yes, sir.

Q And so, now we saw the picture — can we bring the picture up again? Thank you. And so, this is a view from your porch, is that right?

A Yes, sir.

[215]

Q And where the person is in that photo, that's where the truck was coming up, right?

A Yeah, it was more going over to the side, like going up Sugar Hollow.

Q Okay.

A It was making the turn, like going up Sugar Hollow. So, he — it wasn't like in the middle of the driveway, it was over to the edge of the driveway.

Q The truck wasn't in the middle of the driveway or —

A Not — no, it came out and just — it wasn't like in the middle, it was kind of off to the side.

Q So it would be — looking at this photo, just from our angle —

A But the truck came out —

Q You put the person a little bit over to the right —

A Yeah.

Q — and that's where the truck would be —

A Uh-huh (indicating yes).

Q — when it was coming up, and then it turned?

A Uh-huh (indicating yes). And it was moving real slow.

[216]

Q It was moving slow? And you don't know — well, just to be clear, you didn't know if the person driving the truck was male or female, right?

A No

Q Or — and you originally told the officers that it was two people in there, isn't that right?

A I said two to three people in the truck.

Q So you weren't even sure if there were two or three?

A Well, I'm sure it was three. I mean, I know it was three. You could just — yeah, it was three.

Q But at the time you talked to the officers, you didn't know it was three?

A I told them it was between two and three people in the truck, and nobody on the back of the truck. If they were on the back of the truck, they were laying down.

Q And did you take down the license plate number?

A No, sir.

Q Just to be clear, you didn't suspect anything of these?

A No, sir, I did not — didn't suspect anything.

Q Okay. Now, there's a driver and —well, so the passenger, you couldn't tell — could you tell if it was a male or female?

[217]

A Uh-huh (indicating yes).

Q In the middle seat?

A Oh, in the middle seat, no, sir.

Q No, you couldn't.

A Just on the passenger side at the window.

Q Okay. And isn't it true that when you described that person to the officers, you said that it was a man with light brown hair and who was small in stature?

A In the middle of the truck is what I said, not on the passenger side, though. I said it was a light brown person — light brown hair driving the truck, it looked like. But I didn't say anything about the passenger.

Q So you couldn't describe the passenger at all?

A Yeah, I did. I picked the passenger out.

Q Well, I know, but when you were actually questioned about who the passenger was, what kind of description did you give the officers?

A I don't think I gave a description, really. I don't remember. I don't remember, but I —

Q So did you — is that because you didn't know, at all, what the person looked like?

A He's confusing me, I don't know what you mean.

Q I'm sorry, I don't mean to confuse you.

[218]

MR. QUATRARA: Judge, I'm going to object to the form. The witness is obviously confused by the question.

THE COURT: Well, I think he was just starting to rephrase the question.

MR. QUATRARA: Thank you.

Q I'm sorry, I don't mean to confuse you. I know — my question is, the passenger, did you ever give a description of what the passenger — the only person that you could see in there, and know that — even if it was a male or female —

A I said that —

Q — did you describe any of their features?

A I said the person that was driving was a smaller person. When they come out of the driveway, you could see. It was a small frame person, is what I said.

Q You don't — you didn't give any hair color at all?

A I don't remember, maybe light brown for the driver. I don't remember.

Q So you described the driver, but you didn't describe the passenger?

A No.

Q Is that right?

A Yeah.

[219]

Q Okay.

A I guess, I don't even remember now.

Q You said that there as an orange stripe on the truck?

A Yes, sir.

Q Was that a stripe that was across the body of the truck?

A Yes, sir, it went down the side.

Q So that when it was turning you could see an orange stripe across the whole side?

A Uh-huh (indicating yes).

Q There wasn't a stripe that was on the hood? You know, sometimes they have those stripes that come up on the hood?

A Uh-uh (indicating no). It was on the side of the truck.

Q Okay. Can we — can you show the jury about how — you said it was about that thick?

A Yes, just a little orange stripe running down the side of the truck.

Q And it — did it go from the front to the back the entire way, like across the —

A Yeah.

Q — door?

[220]

THE COURT: Mr. Barnhardt, I'm sorry, but you said that thick. We need a number for the record.

Q That —

THE COURT: You said the stripe was that thick.

Q Oh, the stripe was about three inches.

MR. QUATRARA: I think the witness' — I'm not in the business of —

A Yeah, I—I don't think—

MR. QUATRARA: I think her hand is smaller, I would object to the characterization of three inches, but I guess.

Q Two to three inches?

A Yeah.

Q Large enough for you to see?

A Yeah, large enough for me to see.

Q Okay. When the truck passed you by, could you — what did you see of the passenger? Did you see a profile? Or did you see a face turned towards you?

A He looked at me, he was looking over our way, over at my house when they come out. But the truck, like I said, the truck came out of the driveway really slow. And it—when it went past—when it pulled out of the driveway and was going down the road, it was moving really slow. It [221] wasn't like it, like, flew out of there or went really fast or anything like that.

Q Now you say that the driver had light brown hair, is that right?

A Yeah.

Q When did you get a look at the driver?

A I didn't see the driver's features at all.

Q I'm confused, I thought—you just said that you could at least see the driver had light brown hair, is that right?

A That's what I was assuming, yeah. That's what I told the cops. I was assuming the driver had light brown hair and a small frame.

Q And when did you see that?

A When they were pulling out of the driveway, just looking through the window of the truck, that's all I saw.

Q So, is it fair to say that you saw the driver, but you didn't see the passenger?

A No.

Q Okay.

A I didn't see the driver good at all.

[222]

Q And when the passenger looked at you, you didn't recognize any sort of facial features at all? I just — just to be clear.

A I just remember the face that I saw.

* * *

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TESTIMONY OF BRADLEY WOOD

* * *

[225:12]

THE COURT: Thank you, Mr. Quatrara. So we can bring Bradley Wood in, please.

(Bradley Wood enters the courtroom at this time)

THE COURT: Good afternoon, Mr. Wood. I'm going to actually swear you in in front of the jury, but there are a couple of things that I needed to admonish you about. Number one is you cannot speak, at all, about Mr. Currier having any prior record, being arrested, serving any jail time, because it could potentially cause a mistrial in this case if the jury has any hint that he has a prior record or that he's been incarcerated. * * *

[DIRECT EXAMINATION]

[By: Matthew J. Quatrara]

[230:17]

Q So you made the decision to go ahead and commit this breaking and entering and larceny offense, correct?

A Yes, sir.

Q Michael Currier do it with you?

A Yes, sir.

Q You see him here in court?

A Yes, sir.

Q Can you point him out for the Judge?

[231]

A (Points to defendant)

Q If the record would please reflect he's identified the defendant, Mr. Currier.

THE COURT: The record will so reflect.

Q Did anybody else do it with you?

A I guess what you call someone being there is the same thing as doing it. So—

Q Who else was there?

A Samantha—Samantha Wood.

Q Samantha Wood is who?

A My wife.

Q What kind of vehicle did you use to do it?

A '78 Ford.

Q What color was it?

A White.

Q What time of day or night did you do it?

A Daytime, it was around eleven o'clock.

Q Okay. So during the day?

A During the day.

Q What did you do with the safe?

A I can't tell you exactly where in Nelson County it was taken to, but it was dumped in a river.

Q Did you participate in the dumping of it?

A Yes, sir.

[232]

Q Okay. What did you do with the guns that were in the safe?

A Left them in the safe.

Q Why?

A Because convicted felons, didn't want no parts of it.

Q Okay. What about the money, what happened with the money?

A It's gone, I guess.

Q Did you use any of it?

A I couldn't tell you how much I used of it. It wasn't much, because I, like I say, I turned myself, it wasn't long after I was wanted, I turned myself in.

Q Who'd you leave it with?

A I left my portion with my wife.

Q Did you know, or have reason to know, whether or not your wife was involved in a relationship with Mr. Currier outside of your marriage to her at this time?

A No, sir. I didn't have a clue.

Q But you're aware of that now, correct?

A Yeah, I've heard allegations of it.

Q But at the time—

A No.

Q —you didn't know?

[233]

A I was not aware of it.

Q Did you find out about it since you've been incarcerated?

A Probably last month, a little over a month.

Q Did Dennis Wood do it with you?

A He was the one kind of set it up.

Q Okay.

A Told—he kind of went into detail when they would be there, when they wouldn't be.

Q Was he present whenever it happened?

A No.

Q How did you get the safe out of the house?

A Carried it, slid it across the floor and carried it.

Q Who did that part?

A Both of us.

Q You and Mr. Currier?

A Me and Mr. Currier.

Q What was Samantha's role?

A Sitting in the vehicle. Pretty much being a watch-out.

Q When you left the residence, were you aware of whether anybody had seen you?

A No, I was not.

[234]

Q And you said that Dennis set the whole thing up, correct?

A Yes, sir.

Q Gave you the idea of schedule and all that kind of stuff—

A Told me when they'd be home, when they wouldn't be home.

Q Okay. Did you tell the police before that Dennis was actually present and there?

A Yes, I did.

Q Why did you do that? Why did you tell—that was not true, correct?

A That was not true.

Q All right. Why did you tell the police that?

A I really can't say, to be honest with you. I guess, just mad at the point that I that I had heard he told on me.

Q Because Dennis had implicated you in an unrelated—

A Yeah.

Q —or a different larceny event?

A Something totally different, yeah.

* * *

[CROSS-EXAMINATION]

[By: J. Addison Barnhardt]

[242:12]

Q Now, you were interrogated by the police a couple times, is that right?

A Yes, sir.

Q And that was Detective Underwood who interrogated you?

A Yes, sir.

Q And you weren't truthful with him when you were being interrogated, isn't that right?

A Not at first, no, sir.

Q Okay. For instance, you said that when your—during the interrogation, that it wasn't your truck that was used—

A Yes, sir.

[243]

Q —during the—and that wasn't true, right?

A Yes, sir.

Q You said, originally—

A By law, it's still not my truck. By law it's in my wife's name.

Q Well you told Detective Underwood that it was Mr. Currier's truck, isn't that right?

A Yes, sir, originally.

Q Okay. But it was your truck?

A Yes, sir.

Q Does your truck have an orange stripe that goes across from the hood to the back?

A It has, like, a little red pinstripe.

Q A little red pinstripe?

A Yeah.

Q That goes from—all the way across the entire truck?

A Yeah.

Q Okay, and about how thick is that—

A Smaller than my thumb, I mean, my pinky.

Q Oh, okay.

A It's real small.

Q So less than an inch?

A Yeah.

[244]

Q Okay. Now, you said that—you originally said that you were in the passenger seat of the truck when it was leaving, right?

A Yes, sir.

Q And—but that wasn't true, was it?

A No, sir.

Q You were driving the truck?

A Yes, sir.

Q Okay. Now, you told the detectives at the beginning that you actually never went to the river to get rid of the safe, isn't that right?

A I might have, I—I said two different stories, I believe, at the beginning, and then I changed and actually said the real story.

Q But you just said that you had—originally, when you talked to the detective, you said you heard tell that they went to the river, but you weren't there.

A Yes.

Q Isn't that right?

A Yeah.

Q But you were actually at the river—

A Yes.

Q —isn't that true?

A Yes, sir.

[245]

Q So, originally you said you were just the lookout?

A Yes, sir.

Q Isn't that right?

A Uh-huh (indicating yes) .

Q But you weren't the look-out, you were actually inside getting—stealing the safe—

A Yes, sir.

Q —or trying to open the safe? And you originally said there was only twenty thousand dollars ($20,000) that was stolen—or about twenty thousand dollars ($20,000), isn't that right?

A I think so.

Q But that was a lie, too, wasn't it?

A Yes, sir.

Q There was more like seventy thousand dollars ($70,000) that was stolen?

A I believe so.

Q And you originally said—well, you said today, that this was all Dennis' idea to begin with?

A He came up with the concept of where some money was, where that kind of money was. He had said it was like a hundred grand.

[246]

Q But you're saying—are you saying today that Dennis wasn't actually there?

A No, he wasn't there.

Q But you said—well, you told the police officers that he was there, wasn't that right?

A In the original story, yes.

Q Didn't you say that when you were driving up in the truck that he was actually sitting in the middle of the truck?

A Yes, sir.

Q And you said that Samantha Lawhorne, your wife, wasn't there? That's what you told the police officers, right?

A Yes. That's the original story.

Q But today—today you're saying that she was there? Was she in the truck with you?

A Yes.

* * *

[248:1]

Q Now, you and Mr. Currier, you hung out from time to time, is that right?

A We were pretty close.

Q But you had a couple falling outs, didn't you?

A Never, never.

Q You never had a falling out—

A Never.

Q —over buying wood?

A Never.

Q Didn't you get upset with Mr. Currier — I'm sorry, let me say that differently. Didn't Mr. Currier get upset with you because you were reselling the firewood that he was selling to you?

A No, because half the time I would call him for firewood, he would go with me and we'd split the money together. He'd help me unload it.

Q You all had a falling out over your wife, didn't you?

A Never.

Q You didn't—you don't remember seeing Mr. Currier's number on your wife's phone?

A Never.

Q That didn't happen?

A Never.

[249]

Q You didn't call Mr. Currier up?

A Never, I haven't found out that until about last month, that he supposedly had a[n] affair with my wife.

Q Okay. You knew the safe was at your aunt and uncle's house, didn't you?

A I knew about it when I was told about it.

Q I don't have any further questions.

* * *

COURT REPORTER'S TRANSCRIPT
October 29, 2013

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

Transcript of the proceedings taken in the Circuit Court for the County of Albemarle, Virginia at the October 29, 2013, Criminal Session, before the Honorable Cheryl V. Higgins, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

CLOSING ARGUMENT OF PLAINTIFF'S COUNSEL, MATTHEW J. QUATRARA

* * *

[254:17]

MR. QUATRARA: Because whether or not these crimes were committed, whether or not Paul Garrison, II and Brenda Garrison were victims of a breaking and entering and grand larceny at their home on March the 7th, 2012 is not in dispute. Mr. Barnhardt is not going to get up in his argument and say, this crime didn't happen. Indeed, indeed, in his opening statement, if you remember back to his opening statement, he readily acknowledged that they did, so instructions fifteen (15) through twenty (20) aren't in dispute. These crimes absolutely [255] happened. What else isn't really in dispute in the case? It's really not in dispute that more than one person committed

this offense, right? You've got jury instructions six (6) through eight (8). It is not — 6 through 8 that say a principal in the first degree is the person who actually commits the crime, and a person is considered present at the scene of the crime if he was in place to render assistance in the commission of the crime and there's a concert of action with the resulting crime of its incidental probable consequences. That's a lot of abstract terminology, and it's also terminology you don't need to consider. You can take jury instructions 6 through 8 and set those off to the side, and why is that? Because it's not in dispute that more than one person committed this offense. How do we know that? What's the evidence that more than one person committed the offense? Whether or not you find it's Michael Currier who is one of the other people or not, how do we know that? Remember, think back to what Mr. Garrison told you. He was the very first witness that testified. What did he tell you about that safe that we know got removed from the house? He told you the safe by itself weighed over seven hundred (700) pounds and that it took he and four other men to get it into the house in the first place. Now you saw Bradley Wood. By the way, we know Bradley Wood did this, right? We know he's one of the people that's [256] involved. How do we know that? He told us so, number one. Number two, you have a plea agreement in front of you as part of your evidence that is an official court document that says he did. Number three, Detective Underwood gave you all the evidence that he did, so we know Bradley Wood is one of those people and you've seen him. He hardly looks like an NFL defensive lineman capable of moving a seven hundred (700) pound safe on his own, so it's not reasonable to think that the crime was

committed by Mr. Wood alone, so instruction 6 through 8 you can discard because we know that someone else was there and actually helping, physically helping remove that safe. It couldn't be done with one person. So we know the crimes were committed; that's not in dispute. We know the crimes were committed by more than one person; that's not in dispute. What is in dispute? What is in dispute? Really only one issue and one issue alone. Was the defendant, Michael Currier, one of those people that was involved in the offense? Was he one of those people that was involved in the offense? Now, how do we go about making that determination? Let me start with instruction #1. It's a long instruction and I'm going to read it to you the most important part of it for purposes of going through the algorithm that I'd like for you to follow and consider the following and that's this. You may not arbitrarily disregard believable testimony of a witness, instruction #1. Said another [257] way, if a witness— if a witness testifies and you believe that person, that testimony is part of the evidentiary algorithm, part of the equation that under the instructions you must follow to reach a finding of whether or not Mr. Currier committed the offense, and I would suggest to you that there are three possible independent algorithms, three independent algorithms by which you can reach that finding, by which the government's case is made. Algorithm number one — victim testimony plus Officer Underwood testimony equals Mr. Currier guilty beyond a reasonable doubt. How do we get there? Well, Mr. and Mrs. Garrison tell you the crimes happened, correct? That's not in dispute. Their testimony is uncontroverted. We had this house; it got broken into; all our stuff got taken. Officer

Underwood's testimony, and this is irrespective of any other witness, this is just victims plus Officer Underwood. Officer Underwood's testimony, I investigate this case. I respond to the house. I find, remember this material that Officer Underwood showed you in his hand that he found at the house? I find this material on the floor of the bedroom where the safe was kept. I do some additional investigation and I locate a truck and in the truck what do I find? Some more material. You be the judge. You saw what it looks like. I would suggest to you that a reasonable person would find that stuff to be awfully similar thus indicating what? That [258] the truck is involved in the offense, all from the testimony of Officer Underwood, nobody else. The truck is involved in the offense. Officer Underwood then administers the photographic lineup. Officer Underwood administers the photographic lineup to Cynthia Sandridge and it's his observation, his present sense impression of how Ms. Sandridge reacts to the lineup that serves as the evidence you need to establish that Michael Currier is in that truck that we know is connected to the offense. Why should we find that testimony of Officer Underwood believable? Remember, you shall not disregard any believable testimony, so what makes Officer Underwood's testimony believable with regard to what he observes from Ms. Sandridge when she does the photo lineup? What makes that believable? Think about the way Officer Underwood told you he administered that photo lineup, but more importantly than how he administered the photo lineup, remember and think about the way Ms. Sandridge responded. She goes through the entire photo lineup once. She gives number one a maybe, number two a no, number

three a no, number four who is Mr. Currier, a maybe, number five a no, number six a no, number seven a no, number eight a maybe. She doesn't immediately focus on number four in a way that might give you some pause about her credibility through Officer Underwood and say, that's the guy, that's the guy, that's the guy. No. She's much more thoughtful, much more [259] pensive about it, and we know that not only from Officer Underwood's testimony but the notes that came into evidence that are before you made contemporaneous to the administration of the lineup which serve to corroborate what he verbally tells you in his testimony. Now, think about the second time we go through it. The second time go through it we rule out everybody else, and when we get to number four, what does Officer Underwood tell you Ms. Sandridge says? It's in the notes; you'll see it. That's the guy in the passenger seat. That's the guy in the passenger's seat. She doesn't embellish; she doesn't inflate. She gives a measured account of who that person was. So we know, then, based on that reaction through Officer Underwood, that that's believable testimony. Put another way, we know that because it doesn't come out in a different way that it's not unbelievable, said another way. So, that's sort of method number one, victim plus Underwood equals conviction of Mr. Currier beyond a reasonable doubt, independent of any other witness. Method number two, algorithm number two to consider. Again, independent of algorithm number one. Victim plus Cynthia Sandridge herself equals Mr. Currier is guilty. Remember, the victims tell you, of course, again, they had their house broken into, they had their stuff stolen, this really happened to them. That's not in dispute. * * *

COURT REPORTER'S TRANSCRIPT
October 29, 2013

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

Transcript of the proceedings taken in the Circuit Court for the County of Albemarle, Virginia at the October 29, 2013, Criminal Session, before the Honorable Cheryl V. Higgins, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

CLOSING ARGUMENT OF DEFENSE COUNSEL, J. ADDISON BARNHARDT

* * *

[267:8]

MR. BARNHARDT: Thank you-all very much for your service, for being so attentive over a whole day yesterday and now, at least a half-a-day of listening to us talk more, but this is it. You did a lot of shuffling back and forth yesterday. The next time you're going to be doing that you're going to be shuffling into the jury room and you're going to be reaching a verdict. So, you heard a lot of evidence, there's a lot to consider, there's a long story here. It lasts over a year-and-a-half, so we need to consider that. Before we get there I want to go over some of the legal principles that Mr. Quatrara didn't quite go over that I would like you to hear. Now, we say these terms a lot and we hear them

on TV a lot, reasonable doubt, beyond a reasonable doubt, presumption of innocence, that he's innocent until proven guilty, and we say them so much and we're so used to those terms that we kind of can gloss over them a little bit and not really get into exactly what they mean but this is the standard, these are the standards by which you-all [268] have to judge Mr. Currier today and to judge the Commonwealth and their case. These are the rules that you have to follow, so my job is to keep letting you know how important these rules are and really how deep they go in their importance, and so presumed innocent, that's kind of the easier one to understand, that he's an innocent—you have to view Mr. Currier today, just like all of us, an innocent man, that he's not guilty just because he's here and the Commonwealth has a case and the police officers have a theory that he was the one who did this.

* * *

[273:17]

[MR. BARNHARDT]: So, we have the detective and his investigation, Detective Underwood. He had a tough set of facts to work with. He didn't have any fingerprints. He had lots of deception from people that were giving him different stories. He had multiple suspects but he finds Bradley Wood and we heard him testify about all the evidence. The material in the truck. This is material that was found at the scene and then found in Bradley Wood's truck, his wife's [274] truck, but I'm going to call it Bradley Wood's truck at Bradley Wood's house, nothing to do with Mr. Currier. He finds Bradley Wood and that's the evidence that we have. He had great evidence for why Bradley Wood committed this crime and then he said Bradley Wood

lied, lied, lied, changed his story over and over again. He said, and I quote, you can't trust, I couldn't trust Bradley Wood and I don't think you-all can trust him either. I think you can trust, I'm willing to trust the fact that he did commit this crime, but that's about it.

* * *

[277:19]

MR. BARNHARDT: So, the defense's position is that the testimony is not very credible. We have — she testifies there are either two or three people in the car. This is a very important case for Mr. Currier and about what she actually saw, and she can't tell you how many people are actually in the truck, two or three. What does that mean? It Means we don't know. We really can't tell what happened, [278] you know, how many people were in the truck. She doesn't know if the driver was a man or a woman and she can remember nothing about the driver, but then she says yesterday I can't remember any of his features, but the driver, the driver was the one who had light brown hair. Light brown hair. We saw that Mr. Currier does not have light brown hair. We see Bradley Wood did have light brown hair. But then she says, the man looked at her but she can't describe anything about that man. This is our eyewitness in the case, somebody that was an eyewitness that can't describe anything about the man that looked at her and we saw, we saw the photo. It was, you know, of Detective Underwood whose, you know, about that tall on the screen, you know, from her porch. Yet, she goes to a photo lineup and with people, and you'll see the pictures, you'll take them back, with all of these men that look very similar she's able to say, that one. I couldn't see him at the time, but

now, eight days later, I know it's that one, I'm certain about it. So, did she see him on the news? Did she see him on the Internet? We know that the media release was before her actual photo lineup, I'm not sure, we don't know, or was she given a description by the Garrisons when they were trying to figure out who it was, the suspect that stole, that might have stolen all this money from us? We're not sure, we don't have evidence about that, but it's a legitimate question. [279] She knew what truck to describe. She couldn't see anything about the man's face that looked at her, but she could see an orange stripe across the truck that she says was about that big but then the owner or the truck or the person who drove the truck said it's smaller than a pinkie. It's a pinstripe, so she knows there's a pinstripe on the truck and I know it's there and she said it was orange. Mr. Wood might have said it was red but, again, this raises questions. She is able to describe this truck in detail and able to describe the driver as perhaps fitting the description maybe of Bradley Wood but nothing about who was in the passenger seat. I'm sure you-all wanted to come in here and have somebody give an unbiased account of what happened, this is what I saw, that's it, these are the facts, I'm giving them to you straight, and I just don't think we—it doesn't seem clear that that was the case from yesterday. So, what are we left with? We're left with Bradley Wood. Bradley Wood is a relative of the victim so he knows them, and it's tempting to try and figure out from all of his testimony from what he said to the cops and what he said on the stand yesterday for you-all to go back there and say, okay, let's sit down and figure out what do we believe about him based on everything else? What do we not believe?

What's the story? But I submit you can't figure out what it is. You can't try and figure it out. We have absolutely no [280] idea. He cannot tell the truth. That was the first thing that he said when I started cross-examining him. You heard that from Detective Underwood who said I never believed him and you saw him. He had no shame about his lies. He just yep, I lied, yep, sure. That was about it. He said, and I quote, hard to keep the story straight. Another quote, maybe it's the first story I told you. Then what about all of his inconsistencies? He turns himself into the police. He said Michael Currier did this, Michael Currier's truck, Michael Currier was the driver and then he admitted, yeah, those were all lies. Well, he admitted that it wasn't Michael Currier's truck they used and Michael Currier wasn't the driver. He says I was the driver, it was my truck. He said it was Dennis's idea and then he admitted, though, it wasn't, Dennis wasn't there. He said he was the lookout at one point. He said he wasn't at the river but he wasn't a lookout. He was at the river when he disposed, lies, lies, lies. He lied about the amount of money there was. He lied that his wife wasn't a part of this, but then yesterday he said my wife was with us, and I think that's really important so the entire time he tells the detective I don't think my wife is, my wife was no part of this. Yesterday he said my wife was with us. What reason does he have to do that? Well, he discovers that, you know, there's an affair and so, yeah, I'm going to take her down, too. He's taking [281] down his enemies. That is what he's doing. He's got bias against Mr. Currier for having an affair. That was something that was raised by the Commonwealth before I even raised it, you know, asking about the affair. We don't know—he denied it.

We don't know what to believe with him, but we have Mr. Wood wanting to take down his wife, take down Mr. Currier for the affair and also implicate Dennis Wood because Dennis said, you know, Mr. Bradley did this other crime and we heard testimony about that yesterday, too, so that's what he's doing. He's in jail; he's picking out his enemies. That's what it looks like and his record speaks for itself so he's got felonies and he's got crimes of moral turpitude, and you'll see the instruction, you may consider proof of a witness's prior conviction of a felony or a crime of moral turpitude as affecting his credibility. It does not render him incompetent to testify so what that means is that he can testify, I mean, it's not like he's barred from testimony. He's competent to sit here and tell you what he did, but the fact that he has a felony means that you have to seriously question what he says and the fact that he has crimes of moral turpitude, lying, cheating, stealing, he has defrauding, fraud charges and stealing charges. You know, that means that you have to seriously consider his morals and what he's doing. Turpitude, I looked it up in the dictionary last night. What does [282] turpitude mean? The New Oxford American Dictionary, just the dictionary on your Apple computer will say it means wickedness. You and I, we don't have these problems that Mr. Wood has when he comes in and wants to tell you something. We don't have felonies or crimes of moral turpitude to worry about, he does. So, imagine how evil it is to get mad at somebody and say, yep, they did this crime with me. He provided no details yesterday about the crime that he committed. He just said, yep, this is who it was, this is what we did. He didn't explain how two men, himself and Mr. Currier, could lift up a seven hundred (700)

pound safe or do anything about that. He didn't tell us how they opened the safe or broke in. There's no details at all. Just, yep, he was with me. And this is the government's star witness. This is the person that places Mr. Currier there definitively. So remember the doctor example. Let's go back to reasonable doubt. The doctor gave you pause. It was a routine checkup. Everything is okay but later he says risky surgery is required and gives you pause, reason to doubt what the doctor— maybe I want to go get a second opinion. The source of information that you have today from Bradley Wood should give you pause. The source of information that you have from Cynthia Sandridge should give you pause in this important decision. Unreliable testimony is how innocent people go to jail. That's why the system is in place [283] and the standards are so high. On unreliable witnesses, on biases, on motives to fabricate stories, on unreliable accusers, the quality of this evidence that you've heard today is bad. It's not simplistic math, it's not an algorithm, this one plus one equals X. It's not just whether you believe it's believable that you have to— we heard—Mr. Quatrara read the instruction many times about you cannot disregard believable testimony, and above that in jury instruction I believe it's #1 says you may consider the appearance and the manner of the witness on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, their prior inconsistent statements and whether they've testified untruthfully about anything in this case. Now the Commonwealth gets the last word so this is the last time I'm going to get to speak to you; otherwise,

this would be a ping pong match, you know, going back and forth both of us saying, this is what I believe, this is what our position is, what our position is. When you hear his points that he has to make in response to what I say, keep what I say in mind, everything that I said. When you go back to the jury room and when you go back into the jury room ask yourself the question, do you have total confidence in the Commonwealth's [284] case that you can put a man who is presumed to be innocent in jail? Thank you.

* * *

[291:24]

THE COURT: And then I believe then that just leaves the possession of a firearm charge?

[292]

MR. BARNHARDT: Yes, Your Honor. We have a motion, would like to make a motion to dismiss the possession of a firearm charge based on collateral estoppel. Just very briefly, the Court has to or the jury would have to find—well, we've got a statement of fact today. We had a finding of fact that Mr. Currier did not steal, break and enter or steal firearms, and I think there's no other way for, and I think that that issue then the jury would be estopped from hearing that, and there's no other way that possession can be made in this case without that finding. They have to—they can't find that Mr. Currier possessed firearms when they are going to be prevented from knowing that he stole the firearms and so I make a motion to dismiss on those grounds.

* * *

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

COMMONWEALTH OF VIRGINIA

Plaintiff, Case No. CR: 12-613

v.

MICHAEL NELSON CURRIER [Filed: Nov. 20, 2013]

Defendant.

Brief in Support of Defendant's Motion to Dismiss And Defendant's Motion to Preclude Evidence By Collateral Estoppel

COMES NOW the Defendant, by counsel, and asks the Court to consider the following:

FACTS

On March 8, 2012, Paul Garrison II and his son Paul Garrison III were victims of theft. Paul Garrison II's house was broken into. His safe was stolen. The safe contained firearms, money, and other family possessions. The same safe was found in a river by Albemarle County police officials three days later. The firearms and family heirlooms, and some of the money were recovered at the scene where the safe was found. The firearms and heirlooms were badly damaged. A large portion of money was never recovered. Bradley Wood was arrested, charged, and plead guilty to breaking and entering the Garrisons' house, stealing their safe, and being a felon in possession of firearms. Michael Currier ("Defendant") was arrested and charged as an accomplice to the same crimes.

PROCEDURAL HISTORY

Defendant was arrested, and he waived his right to a preliminary hearing. At the request of the Commonwealth Attorney, Defendant's case was severed because it would be "reversible error" to try the felon in possession of a firearm charge together with the other charges. The trial date for Defendant's charges of breaking and entering the Garrisons' home and stealing the Garrisons' safe set for September 17, 2013. The trial date for Defendant's charge of being a felon in possession of a firearm was set for October 2, 2013. The September 17, 2013 trial resulted in a mistrial due to the Court's inability to seat enough jurors. That matter was scheduled to be tried again on October 28th and 29th, 2013. The Commonwealth and the Defendant moved to continue the Felon in Possession of a Firearm trial under after the October 28th and 29th jury trial.

On October 29, 2013 a jury found the Defendant not guilty of stealing the Garrisons' safe and its contents. After the acquittal, Defendant made a Motion to Dismiss the felon in possession of a firearm case for reasons of collateral estoppel. The Court did not make a ruling at that time. The Defendant subsequently moved this Court to preclude all evidence related to the breaking and entering and grand larceny at the Garrisons' house. Defendant now writes this brief in support of both his Motion to Dismiss and his Motion to Preclude Evidence under the doctrine of collateral estoppel.

* * *

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

[FILED: December 6, 2013]

COMMONWEALTH

v. Case No. CR: 12-613

MICHAEL CURRIER

COMMONWEALTH'S REPLY TO DEFENDANT'S MOTION TO PRECLUDE EVIDENCE BY COLLATERAL ESTOPPEL

COMES NOW the Commonwealth, by her assistant attorney, Matthew J. Quatrara, and respectfully replies to Defendant's Motion to Preclude Evidence by Collateral Estoppel. In support of her reply, the Commonwealth avers the following:

Procedural Posture

1. The Commonwealth adopts the procedural posture set forth in Defendant's motion, subject to the following additions:

2. Defendant was charged with grand larceny, breaking and entering, and felon in possession of a firearm by warrant on the same day.

3. Defendant was served with the grand larceny, breaking and entering, and felon in possession of a firearm warrants on the same day.

4. Defendant waived his right to preliminary hearing on the grand larceny, breaking and entering, and felon in possession of a firearm charges on the same day.

5. Defendant was indicted by an Albemarle County Grand Jury on his grand larceny, breaking and entering, and felon in possession of a firearm charges on the same day.

* * *

COURT REPORTER'S TRANSCRIPT
December 17, 2013

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

Transcript of the proceedings taken in the Circuit Court for the County of Albemarle, Virginia at the December 17, 2013, Criminal Session, before the Honorable Cheryl V. Higgins, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

HEARING ON MOTIONS TO DISMISS AND TO PRECLUDE EVIDENCE (DOUBLE JEOPARDY)

* * *

[305:14]

THE COURT: So, let the record reflect this is the case of Commonwealth versus Michael Nelson Currier. Mr. Currier is in the courtroom with his counsel, Mr. Barnhardt, and Mr. Quatrara is here on behalf of the Commonwealth and this is how the Court is going to rule. When the Court looked at *Phillips v. the Commonwealth*, for the record, 20 Va. App. 674, there was an explanation as to double jeopardy and the collateral estoppel issues that arise, and in that particular case the Court found that when charges are brought simultaneously, it prevents the Commonwealth or prosecutors from using the prosecution of a minor offense as [306] a dress

rehearsal for a more serious later prosecution, or in the alternative, that double jeopardy and collateral estoppel are designed to prevent the Commonwealth from subjecting the accused to the hazards of vexatious multiple prosecutions. The statute prevents a prosecutor from subjecting the accused through successive prosecutions to embarrassment, expense, ordeal or compelling him or her to live in a continuing state of anxiety or security. I find that those concerns are not applicable in this case. The Commonwealth was not even in a position where they could consider trying these cases simultaneously. It would have been prejudicial to the defense and Mr. Barnhardt is correct, it is not permitted by law and, therefore, I find that collateral estoppel does not apply in this case and that the Commonwealth does not have the ability to try these matters simultaneously, and the concerns that serve as the basis for collateral estoppel and double jeopardy are not concerns that are raised by the facts of this particular fact under the statute, so the defense motion is denied and your exception to the Court's ruling is certainly noted.

* * *

COURT REPORTER'S TRANSCRIPT
March 11, 2014

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

Transcript of the proceedings taken in the Circuit Court for the County of Albemarle, Virginia at the March 11, 2014, Criminal Session, before the Honorable Cheryl V. Higgins, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

JURY TRIAL AND HEARING ON MOTION IN LIMINE

* * *

[307:1]

THE COURT: So, let the record reflect this is the case of Commonwealth versus Michael Currier. Mr. Currier is in the courtroom with his counsel, Mr. Barnhardt. Mr. Quatrara is here on behalf of the Commonwealth, and we are here today for a trial by jury on the possession of a weapon after having been convicted of a felony charge and I understand there's a motion in limine, Mr. Barnhardt, is that correct?

MR. BARNHARDT: There is, Your Honor, yes. I filed a motion in limine and there are really three distinct issues in the writing that was filed and we'd ask for a ruling on all three. They all flow together, so depending on what the Court would prefer, I can just

address, address it all as a whole now or we can take them one by one. I'm prepared to just address them as a whole if that would be easier.

THE COURT: I would say to address them as a whole because I think they are interrelated.

MR. BARNHARDT: Thank you. Just to be clear, we are not going to be arguing collateral estoppel or double jeopardy. Sometimes with the nature of this case it might seem like that. I really—we understand the Court's ruling [308] that collateral estoppel doesn't apply because this is the same case, not separate cases, so we are not arguing double jeopardy. We want to preserve it for the record but that's not the point of this motion in limine today, though we are still trying to prevent evidence of breaking and entering and theft of the Garrison's house and of the Garrison's safe, and the reason being that we don't—that it's not relevant to the crime of possessing a firearm. To possess a firearm—this is a case that is about possessing a firearm and not about stealing a safe or going into the Garrison's home, and the main reason to do that, to make this argument is that there was nothing having to do with a firearm at the Garrison's home where this took place. A safe was taken and our argument is that you cannot possess a gun that's in a locked safe. You don't know the nature and character of the weapon/of the gun inside when there's a locked safe. You can't intend to possess what you don't know is in there, and the big one is really dominion and control. You don't have dominion and control over a gun that's in a locked safe, and the best analogy under the established case law is a locked glove compartment in a car, and the Virginia Supreme Court has ruled that if you're a passenger in a car and there's a locked glove

compartment, you do not have dominion and control over what's in there. If you have the key, then you have the means to get in, and so in this case if the [309] defendant had a key to get into the safe then that would be a different story or if the safe was open to the house that would be a different story because possession of a firearm would be relevant at the house, but because of the nature of this fact, nature of this case, the safe actually had to be taken away from the house in order for the means/ in order for the safe to actually be opened, so possession of a firearm has nothing to do with the house but only with when the safe is opened, and I know that the Commonwealth may argue that if you have the means, that all you need is the means for constructive possession, and so if they went in with tools or if they wanted to rip the safe open, then that might be enough for constructive possession at the house but I think that that would be, I don't think that that's what the law is and I think it would be a dangerous precedent. That would like saying that somebody could rip the glove compartment open in a car and so that they have possession even though it's a locked glove compartment or that if somebody is walking by a car or leaning against a car and there's a gun in the car that they could be possessing that gun because they could break into the window or they can use a brick and break in. I think it would be going too far to say that one has dominion and control over a locked compartment because they could do something to tear into it and I don't think there's any case law at all about that. [310]

And the Commonwealth, make no mistake, the Commonwealth does have a case for when the safe is opened. They've got a witness who is going to testify,

Bradley Wood who will testify that when the safe was opened, Mr. Currier was with me and then whatever we did after that, throwing the safe into the river or what-have-you. They have DNA evidence that can connect Mr. Currier and Mr. Wood, so there is a case that the Commonwealth could make without having to use all of this evidence of breaking and entering into the Garrison's house and stealing a safe from that house. If you look at the subpoenas that the Commonwealth has issued in this case, it's everybody from the last trial and I would submit that it's not relevant to have, it's not relevant to have a lot of that information come in that came in in the last trial. The main piece of evidence that is not relevant, I think, is the testimony of Cynthia Sandridge who is the eyewitness in this case. If you go back—through the trial testimony she mentions nothing about the safe. She mentions nothing about guns. It's only a matter of seeing somebody leave a house, and so that evidence is about breaking and entering and about theft. It has nothing to do with possession of a firearm, and so I don't think that that should—her evidence is relevant in this case as well as the Garrisons describing, who were the victims in that previous case, and having the Garrisons describe about coming home and finding [311] the door broken into and the house violated and Detective Underwood's, you know, investigation of that breaking and entering and going around to Bradley Wood's house and that entire piece of testimony is not relevant to the possession of a firearm. Now, Detective Underwood can certainly testify about, you know, he was the one that found the guns in the river, so he has a role to play here and the Garrisons I'm sure they have a role to play saying

those are my guns, but to go through all the facts of what happened in terms of the breaking and entering into the house, that was a different case and it's not relevant to Mr. Currier's alleged possession of a firearm. It's—and it would be prejudicial. That's the second argument. So, not only is it not relevant, but it would be prejudicial to allow that because it would be effectively allowing the Commonwealth to bolster their evidence about breaking and entering and theft when that's not what the jury is going to decide today. I think it could be very confusing. It's going to be candidly confusing for me to try and separate out, you know, if this is a case about possession of a firearm but I've also got to defend about this breaking and entering and these bad acts that the Commonwealth would offer against my client which would show his propensity to then possess firearms which I don't think that is allowed either, but in the end, it's just prejudicial and would be confusing to the jury. And [312] then the last part of the motion in limine is that even if Your Honor finds that this evidence is relevant and they're going to allow the big picture in this case, then I would ask the full picture be shown to the jury that Mr. Currier was found to be not guilty of the breaking and entering and the grand larceny. That way the jury can have a clearly demarcated line between breaking and entering and theft, even though the Commonwealth would bring that evidence up, and possession of a firearm which is what will focus them on what they're supposed to decide today rather than trying to figure out if he stole guns and if he—I think that just makes sense to me and would be the fair and equitable way to do it if you allow the evidence in. So, just to briefly repeat, we want to prevent the evidence

because we don't think it's relevant. We think the case should be focused simply on when the safe is opened and when possession can take place, but if you think that it is, if you're going to rule that it is relevant we think it's prejudicial and that the entire story should be shown and all of the evidence should be there if we're going to open it all up and to allow Mr. Currier to present the not guilty verdict from the last trial. That's our argument.

THE COURT: Mr. Quatrara.

MR. QUATRARA: Yes, Your Honor, thank you. I'll take his arguments in reverse, Judge. With regard to the [313] prior acquittal, from the Commonwealth's perspective, it seems that the defense is no more entitled to bring in evidence of the prior acquittal than would the Commonwealth be entitled to bring in evidence of the conviction on the same facts for the same reasons. They're, in effect, two separate findings of fact by two separate fact-finders, same proceeding for purposes of collateral estoppel but two separate fact-finders, and so from the Commonwealth's perspective, that prior acquittal is no more admissible than would be the prior conviction were the situation reversed. With regard to the prejudice issue, I understand Mr. Barnhardt's concern and it makes sense and it's one that I would argue if were—certainly if I were sitting in his chair. From the Commonwealth's perspective, unfortunately, however, the issue is one of res gestae. It is the—it is the entirety of the circumstances. It's impossible for the jury to understand how we get to a safe in the river without the—and how we connect Mr. Currier to the safe in the river without that prior, that prior involvement there in the house. With regard to the

relevance issue, counsel states that the stealing is not relevant, the breaking and entering is not relevant, and that you can't possess a—I'll take his arguments in tandem. You can't possess a weapon in a locked safe without knowledge. At this point, Your Honor, the [314] Commonwealth certainly, as a function of the jury instructions (unintelligible) would certainly I think have to prove knowledge but that's a jury question. Whether we prove knowledge or whether we don't, we'll find out soon enough but that's a jury question, that's a weight question, not an admissibility question. As to the dominion and control component, Mr. Barnhardt brings up the glove compar—the locked glove compartment issue. The glove compartment exception is actually not a creature of the law of possession. The glove compartment exception is a function of statute at this point. It's a function that you're not guilty of possessing a concealed weapon, for instance, that's locked in a statute (sic), so that's issue one, that's locked in a, not in a statute, locked in a glove compartment, so that's issue one for the Court's consideration. From the Commonwealth's perspective, though, the dominion and control is a function of the knowledge. Certainly, a defendant sitting in a passenger's seat of a locked glove compartment without a key who has no knowledge of the firearm certainly can't have dominion and control. The person sitting in the passenger's seat of a locked glove compartment in the passenger's seat who knows about the firearm, maybe that's a different question. Maybe he has dominion and control, maybe he does not. Certainly, Your Honor, the person sitting in the locked—in the car in the passenger's seat with the [315] locked glove compartment with the key has

dominion and control, and from a practical perspective, a person sitting in a passenger seat of a motor vehicle with a crowbar, with a power drill, with something that has the ability to effectuate the same result as the key with that knowledge, if it be borne out, also has that dominion and control. Again, all of that is a—is a jury question. There is no practical difference, from the Commonwealth's perspective, between defendant standing outside safe with key to safe or with combination to safe and defendant standing outside safe with—with crowbar, drill, whatever mechanism. The second issue with regard to that, Your Honor, is it may well be determined, perhaps, that Mr. Wood is the person who had all of those things. He had the power drill; he had the crowbar; he had whatever the mechanism was that ultimately got them into the safe. Under the law of concert of action, a principal in the second degree, let's not forget the evidence will show Bradley Wood is a convicted felon, and so if Mr. Currier aids or abets Bradley Wood's possession of that firearm, even if Mr. Currier doesn't possess it, and the Court can anticipate hearing this argument again at some point later on today. If he facilitated Bradley Wood's possession, then he's a principal in the second degree, whether he actually possessed it or not, and so based on those considerations, Your Honor, we'd ask the Court to [316] consider denying defendant's motion. Thank you.

THE COURT: Rebuttal, Mr. Barnhardt.

MR. BARNHARDT: Thank you. Just to repeat, Your Honor, that they do have a case for possession of a firearm, and that case begins when the firearm can be possessed. Anything else is not relevant and it

would just only be used to prejudice Mr. Currier. As for the not guilty verdict, it's an order of the Court already in what you've already ruled as the same case, and I don't know of any case law or any rule that prevents it from coming in.

THE COURT: So, here are the observations of the Court and then the Court is going to make its ruling. I find what both counsel are arguing is that this case is very fact specific and the determination for the jury is based upon those facts. I agree with Mr. Barnhardt. If he goes in—if someone goes inside the home and there's a locked safe, there's no showing of knowledge of what is actually contained in that safe; however, I do think it's relevant if someone goes in to possess the safe regardless of what's in it, and the Commonwealth can show that someone was acting in concert together to remove the safe. Now that may not be sufficient and that may be appropriate for a motion to strike if that's all the evidence the Commonwealth has, but if there's additional evidence that somebody then did have a crowbar or somebody had a blow torch, somebody had it down [317] by the creek and they found the guns and that a co-defendant says that Mr. Currier was with me and we decided we didn't want the guns and we threw them into the creek, that could be an entirely different situation but I don't think that the Court, I don't find that the evidence is so overly prejudicial that it prejudiced—that it should not be permitted. I find that its probative value does outweigh the prejudice in this case both as to the dominion and control and as to the knowledge. I'm not making any finding with regards to the principal in the second degree argument. I don't find I have to do so for this ruling. I'm also not going to permit the jury to be told that the defendant was not

convicted of the breaking and entering/grand larceny. Mr. Quatrara is right; if he had been found guilty, I would not tell a jury. They are considered separate determinations, and the Court is going to treat them separately so your motions in limine are denied. Your exceptions to the Court's ruling are noted.

[318:6]

THE COURT: So, the Court is going to find for the record that the defense, in order for there to be an orderly trial, is now stating that they have a continuing full objection to the presentation of any evidence with regards to the safe being, for example, in the home related to the breaking and entering as opposed to testimony where the guns were actually found.

MR. BARNHARDT: Yes.

THE COURT: That the basis for the defense objection is that it is not relevant, that it does, that it does, it's not, it's too prejudicial rather than probative and should not be presented to the jury.

MR. BARNHARDT: Yes.

THE COURT: Did I miss anything, Mr. Barnhardt?

MR. BARNHARDT: No.

THE COURT: So, the Court is going to find that's an ongoing continuing objection and will for the record overrule it but not require the defense now to have to stand up before every witness.

MR. BARNHARDT: Thank you.

* * *

COURT REPORTER'S TRANSCRIPT
March 11, 2014

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

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TESTIMONY OF WILLIAM UNDERWOOD

* * *

[DIRECT EXAMINATION]

[By: Mr. Quatrara]

[359:17]

Q Did you recover any other item of evidentiary value that you ultimately submitted to the Department of Forensic Sciences?

A I did. There was also a smoked cigarette butt in the bed of the truck.

Q And did you collect that and submit that to the Department of Forensic Sciences?

A I did.

* * *

[CROSS-EXAMINATION]

[By: Mr. Barnhardt]

[379:23]

Q When you found the safe in the river, the door of the safe was closed, isn't that right?

A Yes.

[380]

Q Okay, and the guns were recovered from inside the safe?

A Yes.

* * *

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TESTIMONY OF CYNTHIA SANDRIDGE

* * *

[DIRECT EXAMINATION]

[By: Mr. Quatrara]

[385:1]

Q All right. Tell the jury about the vehicle that you observed, where was it relative to the residence, and what did you see?

A When I heard the vehicle crank up, I got up and went out on my front porch to see what was going on, and I witnessed the pickup coming out of the driveway.

Q What color was it?

A A white pickup.

Q Okay. How many people were inside?

A Two, that I could tell, two.

Q Now, are you certain that there was two people in the pickup or might there have been a third?

A There could have been a third. I saw two people that I could see.

Q Okay. Now, were you able to identify who the driver of the pickup was?

A No, sir.

Q Why not?

A I couldn't see him because of the glare on the windshield.

Q Okay. Now, when the truck turned, did it turn, when it pulled out of the driveway did it pull out with the passenger's side facing you or with the driver's side facing you?

A With the passenger's side facing me.

[386]

Q Were you able to identify the person in the passenger's seat?

A Yes, sir.

Q Do you see that particular person here in court today, ma'am?

A Over here.

Q Your Honor, if the record will reflect she's pointed out Mr. Currier.

THE COURT: So, the record will reflect that she has identified the defendant.

Q Now, did you at that point notice if there was anything in the bed of the, on the back of the truck?

A Yes, sir, I did see the safe in the back of the truck.

Q Okay. You saw a safe in the back of the truck?

A Yes, sir.

Q Now, did there come a time in which you—you got interviewed by police that day, correct?

A Yes, sir.

Q The day that you saw the white truck pull in? Now at that point I'd ask you this question. Were you under the influence of any substances or anything?

A No, sir.

Q Okay.

A No, sir.

[387]

Q Ever been convicted of a felony?

A No, sir.

Q Ever been convicted of a misdemeanor that involves lying, cheating, or stealing?

A No, sir.

Q Okay. After you gave that first interview, did there come a time in which you were interviewed at your work place by Officer Underwood?

A Yes.

Q Okay, and did he show you a photographic lineup at that point?

A Yes, sir.

Q Now, at that point were you aware of any news media coverage involving this particular investigation?

A No, sir.

Q Do you get the newspaper out at your home?

A No, sir.

Q And what kind of television service do you have at your house?

A Direct TV.

Q All right. What, if any, local channels do you get with your direct TV?

A None.

Q None? Do you get Richmond for your CBS or you don't get any of that, NBC—

[388]

A No, I don't get any of that.

Q Okay. So, you don't get 29, you don't get 19, none of the local news outlets?

A No, sir.

Q Now, when Officer Underwood administered the lineup, photo lineup to you, did he talk with you at all while you were going through the photos?

A No, sir.

Q Did he make any suggestion to you as to who the person was that you were looking at?

A No, sir.

Q Prior to that day, had you ever seen that person before?

A No, sir.

Q Do you know this gentleman personally at all?

A No, sir.

Q No relationship with him, anything like that?

A No.

Q Ms. Sandridge, those are all the questions that I have for you. This is Mr. Barnhardt. He represents Mr. Currier. He may have some questions for you or the Court may have some questions for you.

[389]

CROSS-EXAMINATION

By: Mr. Barnhardt

Q Thank you, Ms. Sandridge. So, March 7th, 2012 was during the daytime when you were hearing banging across the street. That was just a normal day for you, right?

A Yes, sir.

Q You weren't at work—

A No, sir.

Q —and that was normal for that day?

A Yeah.

Q How long have you lived across the street from the Garrisons?

A Thirty (30) years.

Q Okay, and you're friendly with them?

A Yes, sir.

Q Good neighbors?

A Oh, yes, sir, awesome neighbors.

Q Do you know their kids?

A Yes, sir.

Q Now, you said you heard a truck start up and you went to the window, right?

A I went to the window and then I went out on my porch.

Q All right, and so what made you take that extra step out?

[390]

A Because I heard things going on across the street. We kind of look out for each other being that far out in the country—county.

Q And so you saw a white truck coming up the driveway when you looked out?

A Uh-huh (indicating yes).

Q And there were glares and stuff on the windows so you couldn't see it when it was facing you.

A Yeah.

Q But then you got a, kind of got a glance inside when it was—

A Got the side view.

Q And the Garrisons owned a white pickup truck on March 7th, right?

A Yes, sir, they did.

Q And so you thought this could have been one of the Garrisons', their son's truck just leaving?

A Yes, sir, I thought it was their son's truck, that's why—

Q So, when you were looking at the truck coming by you, you didn't think anything was out of the ordinary.

A Not at first I didn't, no, sir.

Q But you took a step outside because you wanted a closer look, and can you explain why?

A I always do. It's just a habit.

[391]

Q Oh, okay, all right.

A We kind of, like I said, we look out for each other, so—

Q So, could you describe the truck? Were there any other features of the truck that you could describe besides the fact that it was white?

A It was white with an orange stripe. It was a later model truck, older model truck.

Q Can you tell us more about the orange stripe? Did it go from end to end of the truck?

A I think it did, yeah.

Q And about how thick was it?

A Like this.

Q So, that's about three inches?

A Yeah, it looked enough like their truck that I didn't really, you know, I thought it was them over there.

Q Now, so let's talk about, you know, who you saw inside the truck. You originally said that you thought it was two people in the truck, right, when you were first interviewed?

THE COURT: I'm sorry, you have to answer yes or no.

A Oh, I'm sorry, yes, sir. Sorry, sorry.

Q We have a court reporter so we've got to get it all verbally.

[392]

A Yes, sir. I apologize.

Q So, you said originally on the first date that you were interviewed that it was two people that you saw in the truck.

A I said it was two. It could have been more.

Q It could have been more.

A Yeah.

Q You couldn't tell.

A Yeah, when they first come out I couldn't tell.

Q But you said later on, in September, 2013, you said when the officer and the Commonwealth's Attorney went to your house, you said it was three people, right?

A I said it could have been three people. I wasn't sure.

Q I want to make sure I get it straight. At first you said it could have been two and then you said it could have been three?

A Yeah, I guess.

Q And then today you testified that it was two people?

A I'm thinking that's what I said, yeah, from the get-go was two people.

Q But you haven't been sure, right? I mean it was—

[393]

A Well, I told them somebody could have been laying in the back of the truck, I didn't know. I couldn't see that.

Q Now, where, you said you saw a safe in the truck. Where was the safe?

A On the bed of the pickup truck—

Q And—

A —close to the end of the bed of the pickup truck, to the tailgate end.

Q And what color was it?

A It's brownish-gray. I don't—grayish, brown-black.

Q How could you tell it was a safe?

A You could see the knob on it. I could tell it was a safe.

Q You could see a knob?

A We have one just like it, so I knew what it was.

Q Pointed towards you, the knob was? Now, the truck took a left out of the driveway so you got to see the passenger side of the truck, right?

A Yes, sir.

Q And did you tell the officers that you could describe what the passenger looked like?

A Yes, sir.

[394]

Q And what did you, how did you describe the passenger?

A I don't think I described the passenger. I think they just showed me the photo lineup.

Q No, on the first day that you first talked— the photo lineup was a couple, was about a week later.

A Yeah.

Q Is that right? So, on the day that—

A I'm trying to remember.

Q When you were first investigated, you described a passenger having light brown hair to Officer Underwood, is that right?

A The driver.

Q You said the driver had light brown hair. Okay, and the driver was small in stature.

A Or he looked small is what I said.

Q So, you could see—

A Medium, small is what I said.

Q I want to make sure I get it right. They're sitting three across in the truck? I mean, it's not one of those trucks with a back seat?

A No.

Q So, it's three across, so you could see the driver's features but you couldn't see the other people's features in the car, is that right?

[395]

A I couldn't see the driver's features. I could see the light brown hair.

Q Okay, but you couldn't see the hair color of the other passenger?

A Well, I saw him sitting at the passenger window, yeah, but they didn't ask me to describe him.

Q I'm just—okay. You said that you could identify the passenger but you could not describe any features on the passenger, right? Is that what you're saying right now?

A They didn't ask me to describe any features of the passenger. I just said I'd know what he looked like if I saw him again.

Q So, they didn't ask about any sort of facial hair or any sort of hair color or clothing?

A Not that, not that I remember. I don't think so. I'm not even sure now.

Q But you did have that conversation about the driver.

A Yeah.

Q So they—

A And I think I said he was medium build with light brown hair is what I said.

* * *

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TESTIMONY OF BRADLEY WOOD

* * *

[DIRECT EXAMINATION]

[By: Mr. Quatrara]

* * *

[401:7]

Q Let's talk a little bit about the events that led up to March the 7th, 2012. Did you come up with the idea of going into your aunt and uncle's place with the safe and the guns and all that kind of stuff? Whose idea was it?

A It was another family member's.

Q Okay. Who was the other family member?

A Dennis Wood.

Q At what point was—did there come a time in which Michael Currier was enlisted to take part in the events?

A Yes, sir.

Q Do you see Michael Currier in the courtroom?

A Yes, sir.

Q Could you point him out, please? If the record would please reflect he's identified Mr. Currier.

THE COURT: The record will so reflect.

Q How did you know Mr. Currier during the time leading up to March the 7th, 2012 with relation—

[402]

A We was incarcerated together before. If you look back, we was at several places together before.

Q Okay. Now, with regard to the plan that led to the events of March the 7th, tell the jury what, if any, conversation did you have with Mr. Currier about what you were going to do and what you expected to find once you were there?

A Well, what I was led to believe was a large sum of money, a hundred thousand (100,000) or better in the safe.

Q And did that information come from Mr. Currier or did it come from somebody else?

A No, it come from someone else.

Q All right. What conversation did you have with Mr. Currier about it?

A Well, when I brought up about the money, he came into—he was in the red on child support and he really needed some money.

Q And so you had a conversation with him about this?

A Yes, sir.

Q When was that conversation relative to when the event actually happened?

A It was several times prior to that.

Q How many times?

[403]

A Numerous times. I couldn't tell you to be honest.

Q Okay. During that time period, in those conversations, was there ever any mention between you and Mr. Currier about what kind of safe or what kind of location the money at issue was located?

A I don't think it was ever brought up what kind of safe it was, but we went and rode by the house to the location.

Q At the house?

A Yeah.

Q How did you know about their—you said you found out from Dennis about the money.

A Yeah.

Q What led you to—you and who went to the house?

A Me and Mr. Currier.

Q Anybody else?

A And Samantha.

Q Okay, Samantha is who?

A Well, that's my wife.

Q Okay. When you got to the house, what did you do?

[404]

A We rode by the house the first day and a work truck was there so we knew, basically Paul Garrison, II was home so we had to leave.

Q Okay.

A Made a phone call, the person said he was leaving to go help his son do a sprinkler system sometime that day from Dennis. We went back and he was gone.

Q What happened when you went back?

A He was gone. We went to the rear of the house.

Q What were you driving that day?

A Started out in a car.

Q Did that change?

A Yeah.

Q Why did it change?

A Because when we went in the house and we went into the bedroom where the safe was located, Mr. Currier swore that he could take a cutting torch and get into the safe. Well, he couldn't.

Q Okay. Did he try to torch it right then and there?

A Right in the bedroom, run out of gas on the tank so we had to leave.

Q Okay, so you left in a car.

A In a car.

Q Did you come back in a different vehicle?

[405]

A Went back to my residence and got a truck, came back and loaded the safe up and took the safe away.

Q Now, when you took the safe away, where did you take it?

A I really can't tell you to be honest. Schuyler, Nelson County, somewhere in that part.

Q Where did you ultimately, you ultimately were able to get the safe open.

MR. BARNHARDT: Object to leading, Your Honor.

A Yes.

THE COURT: Sustained.

Q Thank you. Did there come a time in which you were able to render the safe in a different condition than the condition in which you found it?

A Yes, we opened the safe.

Q All right, and how were you able to open the safe?

A Pry bars and wedges.

Q Okay. Who was there when the safe got opened?

A Me, Samantha and Mike.

Q And what did you discover when you opened up the safe?

A When it first got opened, we discovered a large quantity of guns.

[406]

Q Okay, and did you handle those guns when it was opened?

A No, I didn't want no parts of them.

Q Okay. What about Mr. Currier, did he touch the guns?

A Yes, yes, he took them out and laid them on the bed of the truck.

Q Okay, and did you have any conversation with Mr. Currier about the firearms in the safe and what ought to be done?

MR. BARNHARDT: Your Honor, I object to leading again.

Q That's not leading.

MR. BARNHARDT: It's a yes or no—

Q It's not leading.

MR. BARNHARDT: —question.

THE COURT: I'm going to ask if the Commonwealth would rephrase.

Q What, if any, conversation and what, if any, substance to that conversation did you have with Mr.

Currier about the guns once they were discovered and Mr. Currier (unintelligible).

A I said we was convicted felons already, I wanted no parts of the guns, to leave the guns behind. The deal was money.

[407]

Q Now, Mr. Currier knew you were a convicted felon, is that correct?

A Yes.

Q How did he respond to your statement with respect to, we are convicted felons already, I don't want any part of these guns? How did he respond?

A His response was, we'll leave them on the bed of the truck, we'll go through, get the money, put the guns back in the safe, throw the safe in the water.

Q Okay, and is that what you did?

A That's exactly what happened.

Q How much time elapsed between the time you went into the house on March the 7th and the time that you dumped the guns?

A We actually went in, like, in the morning time, we left and came back. It was probably three or four o'clock when we—I'd say five o'clock at the latest we dumped the safe.

Q All in the same day?

A Yes.

* * *

[CROSS-EXAMINATION]

[By: Mr. Barnhardt]

* * *

[413:11]

Q You originally said you were in the passenger's seat, right?

A Yeah.

Q That wasn't true?

A No.

Q So, you were in the driver's seat and it was your truck.

A In the truck.

Q You originally denied going to the river and disposing of the firearms, right?

A Yeah.

Q But then you testified that that was a lie, too.

A Yeah.

[414]

Q You lied about how much money was taken. You said originally it was only twenty thousand dollars ($20,000) but it was a lot more than that, wasn't it?

A Yeah.

Q Now, you sold firewood with Mr. Currier before, isn't that right?

A Yeah, I know where this story is going, same story, we had a fallout over firewood, no.

Q No, I just asked you—I just asked you about the firewood, and, you know, I guess—

A Yeah, it's the same story you used last time. We had a fallout over firewood, that's why I'm trying to get him, no.

Q So, you never had a falling out---

A No.

Q —over firewood at all?

A No.

Q That you were selling firewood for more than he was selling it to you.

A Yeah.

Q That never happened.

A He rode with me and sold it with me, I mean, so how did we have a fallout over it?

Q And you never had a falling out over your wife learning about an affair?

[415]

A No. No.

Q You were never squealing wheels by his—by Mr. Currier's house—

A No.

Q —and calling him a whole bunch of times?

A No. If they had an affair, it was after I was incarcerated, no. When he was out joy riding and running around, I was in in jail.

Q Those are all the questions I have, Your Honor.

* * *

COURT REPORTER'S TRANSCRIPT
March 11, 2014

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

Transcript of the proceedings taken in the Circuit Court for the County of Albemarle, Virginia at the March 11, 2014, Criminal Session, before the Honorable Cheryl V. Higgins, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

MOTIONS IN LIMINE

* * *

[423:7]

THE COURT: So, motions, Mr. Barnhardt?

MR. BARNHARDT: Yes, Your Honor, we want to remind the Court of our continuing objection to the evidence we heard today from Paul Garrison II, Paul Garrison III, Cynthia Sandridge, and Detective Underwood as it pertains to the breaking and entering and theft charges and also of Bradley Wood as it pertains to those charges, renewing the motion that I made, the fact that—our argument that they were not relevant to the crime of possession of a firearm and they were unduly prejudicial if relevant. Just reminding the Court of those objections and also at this point I want to renew our objection for---that that evidence should have been barred due to collateral estoppel, which the Court has ruled on, but we still feel

like there are double jeopardy issues for retrying the case entirely again and your ruling, I assume, is the same on those.

THE COURT: It is.

MR. BARNHARDT: Okay, and we'd also like to make a motion to strike the evidence. The Commonwealth has got to [424] prove knowledge, intent, and dominion and control and we have—I think that there's no evidence about the safe so their case comes down to Bradley Wood's testimony about taking guns out of the safe and putting them—Mr. Currier taking a gun out of a safer putting it on a bed, putting the gun back in the safe and, Your Honor, I do not think this shows intent to possess firearms at all, especially the fact that Detective Underwood testified that all twenty (20) guns that were taken were still found inside the safe.

* * *

[430:3]

MR. QUATRARA: And to be clear, it's an argument in the alternative. It's absolutely two separate and distinct arguments. One, that Mr. Currier possesses by virtue of his knowledge plus dominion and control in moving the firearms. Two, if he's not that, then he aids and abets and may well be guilty. A jury could find him guilty that way as well. So, it's an either/or construct.

* * *

COURT REPORTER'S TRANSCRIPT
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CLOSING ARGUMENTS

* * *

[448:6]

MR. QUATRARA: Thank you, Your Honor. It's hot and it's late, two bad combinations, so I'm going to try and make this as quick as I can. There are times when, as a prosecutor, it's my job to be an advocate. It's my job to have histrionics and to emotionally argue things. You saw a little bit of that during the trial with regards to some issues of law that came up and you might see my animation level go up at that point. Today with this case, that's not what today is. Whether or not I think the evidence is sufficient doesn't really matter. It's about what you think.

Today it's your call. I'm going to present to you some things as food for thought and I'm going to let you-all go back there and let you make the decision. You-all are the conscience of the community. You're

really no different in this instance than people going to the polls to elect a representative. You're just exercising your judicial rights today if you think about it by way of a parallel. So, today is the day you-all are going to make a call and you're going to decide how things go, your decision. I think there's three questions in the case. I think two of them are easy. [449] I think one of them is hard. All right. Let's start with the easy ones. Elements of the offense, the defendant has to be convicted of a violent felony. That's easy right? You have a certified court document in front of you that's in evidence that shows he's convicted of breaking and entering. Jury instructions tell you that's a violent felony under the Code of Virginia. Easy, check, that should not be hard. That's not something that you necessarily need to spend a lot of time on. Element one, satisfied, and this is a lot like building a house, maybe, where, you know, you pour the foundation, you frame the walls, you build the roof. That's what the elements are to give you a parallel or an illustration. So, first issue, say I pour the foundation. Did he have a prior felony? Yes, easy, you shouldn't struggle with that at all. That shouldn't be in any way an issue. Second issue, which I think is also, it's a little more complicated, it's a little more difficult, but I think it resolves itself in a way that you-all probably will be able to wrap your arms around pretty quickly. Was it him? Was it him? Did he do this? What evidence do you have that it's him? Well, the evidence you have that it's him is essentially, I guess, threefold. All right? The first evidence that you have that it's him is the testimony of Bradley Wood. All right. I told you from the beginning, and I think I was right, you weren't going to like him. He's not [450] somebody that you're

going to have a great deal of warm feeling towards, understandable. But he does tell you, look, I engaged in these acts, these things happened and this is the person that did it with me. That's a piece of evidence for you to consider. You've got a cautionary instruction in there that tells you, you know, hey, be mindful about how you approach this, and you should be mindful. The guy is a convicted felon. He's here, he's pled guilty to, based on a plea agreement that's going to be before you, to breaking and entering and grand larceny and possession of a firearm by a violent felon. He's pled guilty to those things and he's got the prior that you're going to have in evidence in front of you and you should kick the tires on that, absolutely, but it's not just him that tells you that this is the person who engaged in this behavior. What else do you have? You've got the eyewitness testimony of the neighbor across the street, Ms. Sandridge, right? She's the second sort of layer and she really does it twice if you think about it. She does it first with respect to her identification through Detective Underwood, Officer Underwood, with the photo lineup. She picks him out and says, that's him. You have the photo lineup of eight photos (unintelligible). She picks him, he's number four, that's how that goes and she sits here in court today and says, yeah, that's the guy. Now, there are some limitations with her testimony [451] too, right? I mean, I'm not going to try and run away from that. Why should I run away from that? There's a bias there, right? Our neighbors want to be helpful. Our neighbors by definition want to be helpful. They want to be able to assist, right? Of course they do. There is a desire, I think, on her part to be helpful. You heard some, and Mr. Barnhardt and Ms. Sandridge sort of

got into a little kerfuffle (sic) there about two people, three people, light hair, beard, physical description of the driver versus physical description of the passenger. I think she's pretty consistent on that though. I think Mr. Barnhardt jostled her a little bit but at the end of the day, she's pretty clear. The guy sitting in the passenger seat is that guy and it's the same guy that I picked out of the photo lineup. It's not perfect, it's not A plus. Would you bet the mortgage on it? If somebody would come in and pay off your mortgage if she was right about that, would you bet the mortgage on it? Maybe you would, maybe you would. So, there's two layers, there's Mr. Wood, there's Ms. Sandridge. Another thing to consider, was it him? The third and probably the obviously most compelling piece of evidence was the first piece of evidence that you heard about right out of the box and that's from the folks from the lab in Richmond, right? They told you, and again, their evidence isn't perfect, Ms. Shenk was very clear about what her evidence was not. She didn't say, [452] this DNA belongs to that guy sitting in that chair. That's not what she says, so think about it as you process it. What she says is there's DNA on a cigarette butt. Where is that cigarette butt found? It's found in the bed of a pickup truck along with two other things. What were those two other things? Insulation and metal shavings, right? Insulation and metal shavings that were also found where? Just like I told you in opening statement, they were also found at the residence, correct? Those things are found in the bed of this pickup truck. What she tells you is the DNA off of that cigarette butt matches an entry that Ms. Grubb told you about in the DNA database that's connected to a conviction that's before you. We go back to that

first element. If you look at the date of conviction, it's the same as the date in the database entry with that person. It's not with 100% accuracy. There might be some wiggle room about, what if they made a mistake in the entry in the database? And that's all stuff for you to weigh and to consider but it's pretty good. Would you bet the mortgage about whether or not the DNA on that cigarette butt is that gentleman's DNA? I think you would, I think you would. Now, there are some obvious follow-up questions for that that you might have. You might think, well, gee, it's in the bed of a pickup truck. It's in the bed of a pickup truck. How do we know, what did Ms. Shenk tell us, you know? The DNA can [453] be there for a long time if there's exposure. Maybe they were in the pickup truck before, maybe it wasn't that day, it was some other day. Is that a reasonable conclusion in light of all the other evidence? Is that a reasonable conclusion to draw? Ask yourself that question. In light of the fact that Mr. Currier gets picked out of a photo lineup by Ms. Sandridge, in light of the fact that Mr. Wood stands here and says, Mr. Currier did these things with me, is the conclusion that, well, that cigarette butt may have just been there in an open bed pickup truck with no cover, where the only other things found in the truck are other items linked to the removal of that safe from that home, is suggesting that that DNA got there at some other time, that that cigarette butt got there at some other time, is that a reasonable conclusion? Ask yourself that question. So, that wraps up sort of element number two.

THE COURT: In regards to somebody sitting in the (unintelligible) section.

MR. QUATRARA: Thank you, Your Honor. I was just wanting to maybe check my zipper or something. With regards to the third element, and I think that's the hardest one. With regards to the third element, I think it's the hardest one. The third element, did he possess it? Did he possess the firearm? The jury instruction you're going to read that's in your stack, and I'm not going to read it to you, [454] you've already heard it and you can read it for yourselves in the back when you're making your decision, is that he has to have knowledge plus dominion and control essentially, knowledge that the item is there plus dominion and control. And I would suggest to you that if the evidence were them driving down the road with a locked safe and that's it, maybe that's a shaky case. Maybe you can draw the inference that it's a gun safe. Of course it's got guns in it, right? I mean, for anybody who's been around and been around firearms and knows what these big Liberty safes look like, and maybe you draw the inference, well, of course it's got guns in it, it's a gun safe. That might be a shakier case but that's not the case that's in front of you. The case that's in front of you is that ultimately, that safe gets opened. That safe gets opened and at that point does Mr. Currier, ask yourself this question, have knowledge of the firearms being there plus dominion and control over them? Now, what's the best in terms of quantity evidence that he had knowledge plus dominion and control? The best evidence unfortunately for the Commonwealth and unfortunately for you to have to wrestle with it comes from who, comes from Bradley Wood, right, because what does he say? He says oh, no, I didn't touch those firearms, right? You take that for what it's worth. You decide whether you believe that

or not, okay? But what he says about Mr. Currier's possession [455] is what? He takes the guns out and lays them down on the bed. He actually handles them and then they transport them, not a long distance, I'll readily concede that. I'm not going to sit there and tell you that this was, you know, Smokey and the Bandit transporting the, you know, transporting the firearms across state lines, but they transport them to the level that they're able to be put in the river. I submit to you that that safe can't be moved with one person, right? How do you know that? Because Mr. Garrison told you it weighs seven hundred (700) pounds. It took four guys to bring it into his house. I said five in opening statement by the way and my apologies, I was wrong about that. It took four guys to bring it into his house so you know at the point that they're transporting it, it's in the safe. The safe is open, right, and they're moving it. They've got the ability, no different than if it were a swinging door, to be able to go in there and have possession of them, and what the instruction tells you is that the length of time of possession is not material. It just doesn't matter. Now, whether you choose to believe Mr. Wood's lock step version of the events, that's up to you. You-all decide how you want to handle that, but we would suggest to you that the circumstantial case suggests that perhaps, based on your estimation, you could very readily find that he did have, Mr. Currier did have, knowledge plus dominion and control. It's [456] a sticking point and it's one you're going to have to wrestle with. So, I'm going to finish up by saying this. I'm grateful that you-all are here. It's 5:05, all right? I get to talk to you one more time on rebuttal. It will be brief, I promise you. This is your decision today. It's not mine, all right? It's not my

call, it's your call. You'll make the right decision. I just ask you to look at some of those points that we talked about and make a fair decision based on all of the evidence. Thank you very much.

* * *

[464:11]

[MR. BARNHARDT]: * * * I don't want to because I know Mr. Currier is probably cringing inside because I've got to say, all right, so let's assume that he was a part of this and then can he possess it? It's a very uncomfortable place to be in but I would submit to you that even if, even if you think that he might have been a part of this, what we have to say that he possessed firearms is only Bradley Wood, that's it. That's all we've got, so almost in that sense you can wipe away everything else in the case because you're focusing your case on possession of a firearm and you've got Bradley Wood to do that with. No, I don't think you can possess, you know, I would argue that you can't possess firearms when it's in a safe. You don't know what's in there. You don't have control over what's in there. So, that's not something I need to spend time on. The big moment is Bradley Wood [465] saying that Mr. Currier takes guns from a safe and puts them on a bed and so the safe is open if he's there, and we've got to do this horrible thing where we assume that that's the case and he knows about them. All right, so he's got knowledge that's where the guns are. And then look at the law. He's got to intentionally possess those guns and so that's the question you've got to ask yourself. Does somebody intentionally, does somebody want to possess firearms when those firearms remain in the safe? He takes them out and

they put them back in, whoever it was, but at the end of the day no firearms were ever found on Mr. Currier. It's an unusual case. No firearms are found on him at all and the firearms are where they actually always had been. It's just that the safe is in another place. So, does somebody intentionally want to possess firearms when they never take the firearms away for themselves and do whatever they want with them? They stay in the safe. To me that sounds like they do not want—they have no intention to possess those firearms. You heard Bradley Wood say that. So even if you think that Mr. Currier had something to do with Bradley Wood and his stealing from his family, you still have to ask yourself, so did he—did they really intend to take these firearms, possess these firearms, when they were just simply put in, they stayed in the safe.

* * *

[467:5]

[REBUTTAL]

[MR. QUATRARA]: Mr. Currier's DNA is found in a truck next to evidence suggesting that a safe containing twenty (20) firearms was broken into. That's the physical evidence before you. Length of time of possession is not relevant. That's the law that's before you.

* * *

[VA S. CT JA: 530]

Instruction No. *10*

To knowingly and intentionally possess a firearm means that a person is aware of the presence and character of the firearm and has actual physical possession or constructive possession. Constructive possession means that the person has dominion or control over the firearm. Mere proximity is not enough.

Possession need not be exclusive; it may be shared with another. The length of time of the possession is not material.

Ownership or occupancy of the premises or vehicle in which a firearm is found does not create a presumption that the owner or occupant either knowingly or intentionally possessed such firearm. Such ownership or occupancy is a fact which may be considered with other evidence.

Possession may be proved by acts, declarations or conduct of the defendant from which it may be fairly inferred that he was aware of the presence and character of the firearm at the place found *and was intentionally and consciously aware of it.*

Given
3-11-2014
[illegible]
Judge

[VA S. CT JA: 531]

Instruction No. *11*

The defendant is charged with the crime of possessing or transporting a firearm after having been convicted of a violent felony. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant knowingly and intentionally possessed or transported a firearm; and

(2) That the defendant had been previously convicted of Breaking and Entering.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of offense as charged, then you shall find the defendant guilty of possession of a firearm after having been convicted of a violent felony, to wit, Breaking and Entering, but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the offense, then you shall find the defendant not guilty.

Given
3-11-2014
[illegible]
Judge

JURY VERDICT ON GUILT, filed March 11, 2014

[VA S. CT JA: 532]

Instruction No.

We the jury find the defendant guilty of possession of a firearm after having been convicted of a violent felony as charged in the indictment.

Michael Brown
Foreperson

[Expunged Text]

OR

We the jury find the defendant not guilty.

_____
Foreperson

* * *

COURT REPORTER'S TRANSCRIPT
July 29, 2014

Commonwealth of Virginia v. Michael Nelson Currier

Case No. 1428-14-2

Transcript of the proceedings taken in the Circuit Court for the County of Albemarle, Virginia at the July 29, 2014, Criminal Session, before the Honorable Cheryl V. Higgins, Judge Presiding.

This is a partial transcript of the proceedings in the above-named matter conducted on this date.

SENTENCING HEARING

* * *

[488:3]

THE COURT: So, here are the observations of the Court. I agree with counsel. There are two separate issues for the Court to address and one is the procedural issue and one is the substantive issue of the four elements. And I agree with Mr. Quatrara that that last element about the essential—give me just a moment, I want to read it, that the factual issue must have been essential to the judgment rendered in the prior proceeding. And I do find that there is a strong argument, much different than in *Walker*, that the guns being accessed by Mr. Currier were, in fact, part of the essential issue in the grand larceny charge. The larceny was of the safe. The testimony was the guns were in the safe. I believe there was testimony that the

guns were found in the creek and I find that the connection between the larceny, the guns, and the safe act as one final essential element. If they found him guilty of the safe, they found him guilty of the guns. If they didn't find him guilty of the safe, they didn't find him guilty of the guns. But that does not end this Court's inquiry. The whole purpose for collateral estoppel is actually a Fifth Amendment protection and I believe that the Court noted in the *Walker* matter that collateral estoppel is a doctrine, a fact preclusion imbedded in the Fifth Amendment protection against [489] double jeopardy. But in this particular case, this setting of the case subsequent is in a much different position because, as Mr. Quatrara stated, it would have been error and reversible error, not even harmless error for the Court not to set the matters subsequently. That is required by law and because this is not an attempt by the government to infringe upon his Fifth Amendment protection against double jeopardy, but rather to protect the defendant from being penalized by a jury because they're aware of felonies that they shouldn't otherwise be aware of, I find that the collateral estoppel argument fails under this fact pattern and it is on that basis that I deny your motion, Mr. Barnhardt. Your exception to the Court's ruling is noted.

* * *